

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FERO FERATOVIC on behalf of himself  
and all others similarly situated

Plaintiff,

-against-

ZWICKER & ASSOCIATES, P.C.

Defendant.  
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**CLASS ACTION COMPLAINT**

***Introduction***

1. Plaintiff Fero Feratovic seeks redress for the illegal practices of Zwicker & Associates, P.C. concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA").

***Parties***

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a "consumer" as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that defendant sought to collect from plaintiff is a consumer debt, purportedly owed to GE Money Bank.
4. Upon information and belief, defendant is a New York corporation with a principal place of business is located in Amherst, New York.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 25 2010 ★

LONG ISLAND OFFICE

(SI)

**CV 10 1358**

**ROSS, J.**

**REYES, JR, M.**

6. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

***Jurisdiction and Venue***

7. This Court has Federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district since the defendant transacts business in this district and the collection letter was sent into this district.

***Allegations Particular to Fero Feratovic***

9. On information and belief, on a date better known by defendant, defendant began attempting to collect an alleged consumer debt from the plaintiff.
10. Upon information and belief, defendant sent the plaintiff a collection letter dated October 1, 2009.
11. Said letter states in pertinent part: “As of the date of this letter, the balance on your account is \$615.86. Your balance may include additional charges, including delinquency charges, if said charges are permissible in accordance with the terms of your agreement.”
12. The said language can reasonably be interpreted by the least sophisticated consumer in two ways.
13. The language can be read to mean that the total balance already includes additional charges.

14. The language can be read to mean that the total balance might eventually include certain additional charges.
15. Judge Spatt found this language to be violative of 15 U.S.C. 1692g(a)(1) against the same defendant on October 21, 2009 in *Weiss v. Zwicker & Associates, P.C.*, 2009 WL 3366564 (E.D.N.Y.).
16. The said letter from the within defendant is in violation of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692g and 1692e(10) for failing to accurately set forth the amount of the debt and for deceptive practices.

**AS AND FOR A FIRST CAUSE OF ACTION**

***Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of himself and the members of a class, as against the defendant.***

17. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-16 as if set forth fully in this Cause of Action.
18. This cause of action is brought on behalf of plaintiff and the members of a class.
19. The Class consists of consumers who received the same form letter, as did the plaintiff.
20. The Class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the defendant's letterhead in substantially the same form as the letter sent to the plaintiff on or about October 1, 2009; (b) the collection letter was sent to a consumer seeking payment of a purported personal debt; and (c) the collection letter was not returned by the postal service as undelivered, (d) and that the letter contained violations of 15 U.S.C. §§ 1692g(a)(1) and 1692e(10).

21. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

(A) Based on the fact that the collection letters that are at the heart of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable.

(B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.

(C) The only individual issue is the identification of the consumers who received the letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.

(D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.

(E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The plaintiff's interests are consistent with those of the members of the class.

22. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the

absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

23. If the facts are discovered to be appropriate, the plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

24. Collection letters, such as those sent by the defendant are to be evaluated by the objective standard of the hypothetical “least sophisticated consumer.”

***Violations of the Fair Debt Collection Practices Act***

25. The defendant’s actions violate the Fair Debt Collection Practices Act.

26. Because the defendant violated of the Fair Debt Collection Practices Act, the plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in his favor and on behalf of the members of the class, and against the defendant and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Cedarhurst, New York  
March 24, 2010



Adam J. Fishbein, P.C. (AF-9508)

Attorney At Law

**Attorney for the Plaintiff**

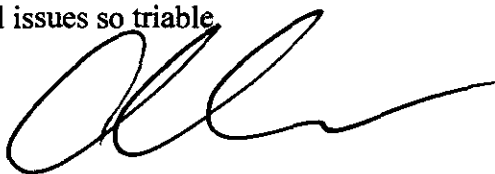
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Plaintiff requests trial by jury on all issues so triable



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